IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Criminal Appeal No.759/2004

Lokesh Kumar S/o Ram Kalyan
Versus
The State through P.P.

2. S.B. Criminal Appeal No.780/2004

Mahaveer S/o Dhannalal
Versus
The State of Rajasthan through P.P.

Date of Judgment :::: 24th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Biri Singh Sinsinwar, with
Shri Harendra Singh Sinsinwar and
Shri Kamlendra Sihag and
Shri Kartar Singh Faujdar and
Shri Anil Kumar, Counsel for accused-appellants
in both the appeals
Smt. Nirmala Sharma, P.P., for the respondent State
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By the Court:-

These two appeals, on behalf of accused-appellants – Lokesh Kumar S/o Ram Kalyan and Mahaveer S/o Dhannalal, are directed against the common impugned judgment and order dated 1st July, 2004, passed by the Additional Sessions Judge (Fast Track) No.1, Bundi, in Sessions Case No.13/2004, therefore, both the appeals are being disposed of by this common judgment.

The trial court has convicted and sentenced the

accused-appellant Lokesh Kumar for the offence under Sections 120-B and 377 of the Indian Penal Code (for short, 'IPC') and accused-appellant Mahaveer for the offences under Sections 120-B, 377 and 376 of the IPC, and sentenced them as under:-

Accused-appellant	***Under Sections***	***Sentence of imprisonment***
Lokesh Kumar	120-B, IPC	To undergo 10 years RI and a fine of Rs.5,000/-; in default of payment of fine, to further undergo one month's additional simple imprisonment.
	377, IPC	To undergo 10 years RI and a fine of Rs.5,000/-; in default of payment of fine, to further undergo one month's additional simple imprisonment.
Mahaveer	120-B, IPC	To undergo 10 years RI and a fine of Rs.5,000/-; in default of payment of fine, to further undergo one month's additional simple imprisonment.
	377, IPC	To undergo 10 years RI and a fine of Rs.5,000/-; in default of payment of fine, to further undergo one month's additional simple imprisonment.
	376, IPC	To undergo 10 years RI and a fine of Rs.5,000/-; in default of payment of fine, to further undergo one month's additional simple imprisonment.

All the sentences were ordered to run concurrently.

Learned counsel Shri Biri Singh Sinsinwar and Shri Harendra Singh Sinsinwar, appearing on behalf of accused-appellants Lokesh Kumar and Mahaveer, did not challenge the order of conviction passed by the trial court against both the appellants and contended that, looking to all the facts and circumstances of the present case, the sentence of 10 years RI awarded by the trial court under each offences be reduced to a

period of 7 years RI.

The learned Public Prosecutor has supported the judgment of the trial court and contended that there is no merit in the submission of learned counsel for the appellants and the appeal be dismissed in toto.

I have considered the submissions of learned counsel for both the parties and examined the statement of PW-10 Nirupama @ Nita, and also the finding of the trial court.

The order of conviction passed by the trial court against both the appellants has not been challenged, therefore, I do not think it fit and proper to refer and discuss the prosecution evidence in detail. However, the relevant facts will be considered for the purpose of considering the prayer of the learned counsel for the appellants for reduction of sentence of imprisonment.

Initially, the prosecution filed a charge-sheet against five persons, namely, Lokesh Kumar, Mahaveer, Ram Kalyan, Smt. Kalyani and Smt. Bhuribai, for the offence under Sections 120-B, 377, 498A/34 and 376, IPC, The trial court framed the charge against accused-appellant Lokesh Kumar under Sections 120-B, 377, 498A/34; against accused-appellant Mahaveer under Sections 120-B, 377, 376, IPC; and against accused-persons Ram Kalyan, Smt. Kalyani and Smt. Bhuribai for the offence under Sections 120-B and 498A/34, IPC.

The trial court, after considering the entire prosecution evidence, disbelieved the same in respect of the charges framed against accused-persons Ram Kalyan, Smt. Kalyani and Smt. Bhuribai and, therefore, acquitted all the three accused-persons from all the charges levelled against them. The prosecution evidence in respect of accused-appellant Lokesh, so far charge against him under Section 498-A/34, IPC, is concerned, was disbelieved and he was also acquitted from this charge.

The first information report for the incident, alleged to have been taken place on 20.5.2003, was lodged on 27.6.2003 i.e. after the delay of 37 days.

I have examined the statement of prosecutrix Nirupama @ Nita (PW-10), and her cross-examination recorded on 27.11.2003, 18.3.2004, 19.5.2004 and 26.5.2004, and find that there are number of contradictions and improvements in her statement, which could/could not have been proved to be fatal to the prosecution case, but, in view of the fact that the learned counsel for the appellants has not challenged the order of conviction passed by the trial court against the accused-appellants, it is not necessary to discuss the said contradictions and improvements in the statement of the prosecutrix; but, after considering the same, I am of the firm view that this is a fit case wherein the submission of learned

counsel for the appellants can be allowed and the sentence of 10 years RI awarded by the trial court under each offence can be reduced to a period of 7 years RI.

So far as the offence under Section 377, IPC, is concerned, it is relevant to mention that thereunder no minimum sentence of imprisonment is prescribed and the sentence of ten years RI is the maximum sentence prescribed under this Section.

So far as the offence under Section 376, IPC, is concerned, accused-appellant Lokesh Kumar has not been convicted under this Section, but it is only accused-appellant Mahaveer who has been convicted thereunder. Under sub-section (1) of Section 376 IPC, the minimum sentence of seven years is prescribed and it is subject to proviso also that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years also. However, in the present case, the prayer of learned counsel is only to reduce the sentence of imprisonment to minimum sentence of 7 years R.I.

In view of the above discussion and reasons, I think it fit and proper to reduce the sentence of both the accused-appellants under each offence from 10 years RI to 7 years RI.

Consequently, both the appeals are partly

allowed. The order of conviction passed by the trial court against both the appellants is maintained as not challenged by learned counsel for the appellants. But, the sentence of imprisonment awarded against accused-appellant Mahaveer under Sections 120-B, 377 and 376, IPC, is reduced from 10 years RI to 7 years RI in each offence and sentence passed against accused-appellant Lokesh Kumar under Sections 120-B and 377, IPC, is also reduced from 10 years RI to 7 years RI in both offences. The order of the trial court in respect of fine is maintained.

(Narendra Kumar Jain) J.

//Jaiman//